

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

George Wilson

v.

Civil No. 13-cv-129-JD

Port City Air, Inc., et al.

O R D E R

George Wilson brought suit against his former employer, Port City Air, Inc.; its chief executive officer, Ned Denney; its president, Robert Jesurum, and another employee. The complaint alleges discrimination and retaliation claims under RSA 354-A, wrongful discharge, and unlawful employment practices in violation of 42 U.S.C. § 2000e, et seq., ("Title Seven"). On April 5, 2013, defendants Ned Denney and Robert Jesurum moved to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the claims against them -- Counts XII through XV against Jesurum, and Counts XVI through XIX against Denney. Wilson filed both an objection to the motion and an amended complaint on April 19, 2013, that includes additional allegations against Jesurum and Denney.

An amended complaint may be filed once as a matter of course within twenty-one days after service of a motion under Rule 12(b). Fed. R. Civ. P. 15(a)(1). A properly filed amended complaint supersedes the original complaint, and "[t]hereafter

the earlier complaint is a dead letter and no longer performs any function in the case." Connectu LLC v. Zuckerberg, 347 F.3d 82, 91 (1st Cir. 2008) (internal citations and quotation marks omitted); Kolling v. Am. Power Conversion Corp., 347 F.3d 11, 16 (1st Cir. 2003). As a result, the motion to dismiss the original complaint is moot. See, e.g., Boston Granite Exchange, Inc. v. Greater Boston Granite, LLC, 2012 WL 3776449, at *6 (D. Mass. Aug. 29, 2012); Applied Underwriters v. Combine Mgmt. Inc., 2011 WL 1467239, at *1 n.2 (D. Me. Apr. 18, 2011).

Conclusion

For the foregoing reasons, the defendants' motion to dismiss (document no. 9) is terminated, without prejudice, as moot.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

April 23, 2013

cc: Matthew T. Broadhead, Esquire
Jacob JohnBrian Marvelley, Esquire
Paul McEachern, Esquire